

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,380

HARRY A. GOLDSBOROUGH,
Appellant,

v.

JOHN MARSHALL, ET AL.,
Appellees.

No. 13,381

HARRY A. GOLDSBOROUGH,
Appellant,

v.

WILLIAM T. WARD, ET AL.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from a final order dated April 23, 1956, and from an amendatory order, dated May 17, 1956, of the District Court, sitting in probate, which removed appellant as co-administrator of the estate of his deceased wife, and first appointed appellee Marshall, and subsequently appellee Ward, as administrator de bonis non. Notice of appeal from the

original order of revocation was filed April 26, 1956, and from the amendatory order on May 28, 1956, (J.A. 22-25). The appeals were consolidated for the filing of briefs, of filing a single joint appendix and for hearing, by order of this Court on June 18, 1956.

Jurisdiction is conferred by Title 28, Section 1291, of the United States Code.

STATEMENT OF CASE

Susanah Viola Goldsborough, a resident of the District of Columbia, died intestate on September 21, 1954, leaving surviving her as next-of-kin and heirs-at-law, her husband, Harry A. Goldsborough, the appellant herein, a resident of the District of Columbia, and six children by a prior marriage. One of the children, Beatrice E. Rusk, a resident of the State of Maryland, filed a petition for letters of administration (J.A. 1-2). Appellant, as surviving husband, filed an answer thereto and a cross petition praying for his appointment as administrator (J.A. 3-7). The Rusk petition omitted the name of Mildred Stoute, a daughter residing at 1718 Independence Avenue, S.E. - it was subsequently entered in ink - and through inadvertance letters were first granted to Beatrice E. Rusk but later set aside by the court upon motion filed by the Register of Wills (Tr. 37, J.A. 28). Thereafter the matter came on for hearing, upon consideration of the petition and the answer thereto and cross petition of appellant for letters of administration, and on November 22, 1954, the Judge entered an order, consented to by attorneys of record for the parties, appointing appellant and Beatrice Rusk co-administrators of the estate, and they duly qualified, filed an undertaking, and letters were issued to them on December 7, 1954 (J.A. 7-8). At that time appellant stated that he owned all decedent's real estate and that it was held in his wife's name in trust for him. On the other hand, Mrs. Rusk was contending that \$8,900, which was on deposit and had been on deposit in the name of Harry A. Goldsborough personally prior to the death of Mrs. Goldsborough,

was part of the estate. Appellant and his co-administrator Mrs. Rusk met and agreed to settle the matter amicably through her Maryland attorneys, then attorneys of record in the Estate case. Appellant and Mrs. Rusk then went to the Maryland office of the attorneys of record where they both signed an agreement, to obviate the necessity of controversial court action, whereunder the children were to relinquish claim to the \$8,900 and appellant was to convey by deed the real estate in the name of decedent and claimed to be held in trust for him. One of the attorneys of record for the parties witnessed the agreement, and also prepared and recorded a deed, whereby appellant transferred his interest in said real estate to the six stepchildren. Appellant had little education, but an honorable career of service in the Navy. He lived with his wife for 30 years, provided for her six children, and it was all his money (J.A. 28-36). The Maryland attorneys subsequently appeared in Court prepared to testify and the Judge refused to approve an order permitting them to withdraw as attorneys on August 8, 1955. Leave to withdraw was later granted by a Deputy Register of Wills (J.A. 20). Separate inventories of money and debts due deceased were filed by Beatrice E. Rusk, March 30, 1955, (J.A. 9) and by appellant on April 14, 1955 (J.A. 10). The parties had worked out a solution and then a new attorney appeared (J.A. 30). Thereafter, on May 27, 1955, a motion was filed by attorney Wood on behalf of co-administratrix, Beatrice E. Rusk, not signed by her or her attorneys of record, praying for the removal of appellant, Harry A. Goldsborough, as administrator, wherein it was alleged (1) that appellant failed to file his inventory of money and debts due to deceased, (2) that appellant failed to have the jewelry and personal property in his possession appraised, and (3) that appellant claims the sum of \$8,900 as his personal property and should be removed as administrator "so that suit may be instituted against him on behalf of the estate to determine whether said sum of \$8,900 belongs to the estate or is his personal property." (J.A. 13)

Appellant filed an Answer to this motion setting forth a copy of his inventory under oath, stating that he had filed his inventory; that the

\$8,900 was not part of the estate and that he had the jewelry and personal property appraised by the court appraisers (J.A. 14-15). The motion for removal of administrator was continued on several occasions (J.A. 16) and came on to be heard on December 20, 1955, before Judge Youngdahl, who after argument of counsel, without testimony, took the matter under advisement, and on January 10, 1956, issued a memorandum that, in view of their controversy as to what property left by decedent should be administered in the estate, both appellant and Mrs. Rusk should be removed as administrators and a neutral administrator d.b.n. appointed (J.A. 20).

On April 23, 1956, the Probate Judge entered an order removing appellant and appointing John Marshall, administrator d.b.n. (J.A. 21). Appellant noted an appeal from this order and served the notice together with his designation of record on appellee, John Marshall (Tr. 66-67, J.A. 23). After the time for counter-designation had elapsed, appellee Marshall requested the judge, by letter dated May 14, 1956, that by reason of a transfer in his employment, he be relieved of his appointment as administrator d.b.n. (J.A. 23). Thereupon the Judge, without notice of any kind for appellant to be heard, appointed appellee, William T. Ward, as new administrator d.b.n. by amendatory order dated May 17, 1956, from which order appellant noted an appeal (J.A. 24, 25).

STATUTES INVOLVED

Act of March 3, 1901, 31 Stat., Ch. 854:

Par. 119, p. 1208, (as amended by Act of June 30, 1902, 32 Stat. 525, Ch. 1329), Sec. 11-504, D.C. Code, supra, provides in material part:

"It (Probate Court) shall have full power and authority * * * to grant and, for any of the causes hereinafter mentioned, to revoke letters testamentary, letters of administration ****" (parenthetical material supplied).

Par. 273, p. 1234, Sec. 20-201, D.C. Code provides in material part:

"On the death of any person leaving real or personal estate in the District, letters of administration on his estate may be granted on the application of any person interested, on proof satisfactory to the probate Court, that the decedent died intestate."

Par. 276, p. 1234, Sec. 20-204, D.C. Code, provides in material part:

"If the intestate leaves a widow or surviving husband and a child or children, administration subject to the discretion of the court, shall be granted either to the widow or surviving husband or to the child, or one or more of the children qualified to act as administrator."

Par. 281, p. 1234, Sec. 20-209, D.C. Code, supra, provides:

"Males shall be preferred to females in equal degree."

Par. 288, p. 1235, Sec. 20-216, D.C. Code, supra, provides:

"If there be no relations, or those entitled decline or refuse to appear and apply for administration, on proper summons or notice, administration may be granted to the largest creditor applying for the same; and if creditors neglect to apply, it may be granted at the discretion of the Court."

Act of Maryland, 1798, Ch. 101, subch. 15, Sec. 20, as amended by the act of March 3, 1901, supra, par. 116, Sec. 11-512, D.C. Code, supra, provides in material part:

"The said probate court shall not, under pretext of incidental power, or constructive authority, exercise any jurisdiction whatever not expressly given by this code;
* * * ."

STATEMENT OF POINTS

1. The Probate Court erred in revoking appellant's letters of administration, and in appointing administrator d.b.n. Being a court of special jurisdiction with limited powers it could not revoke the letters granted except for legal causes provided in the Code. Appellant, surviving husband, had been duly appointed and qualified as co-administrator of his wife's estate. He had performed faithfully his duties as administrator, and nothing done by him, or omitted to be done, was legal justification for revocation of his letters of administration.

2. The Probate Court had no power to remove appellant as co-administrator on the unsworn motion filed by an attorney on behalf of co-administratrix. Appellant had filed his inventory of money and debts due deceased, had court appraisers appraise personal property, and performed all duties of his office. As surviving husband, he had a right to appointment, and since he was regularly appointed and qualified as administrator he cannot be legally removed without notice and a trial.

3. The Probate Court had no authority to enter the amendatory order on May 17, 1956, appointing a new administrator d.b.n. after appellant on April 26, 1956, had perfected an appeal from the order of April 23, 1956, removing appellant and appointing first administrator d.b.n. Moreover, the statutory preferences for letters of administration d.b.n. is in the same order as for letters of administration.

SUMMARY OF ARGUMENT

1. The Probate Court is a court of special jurisdiction with limited powers and cannot remove an administrator and revoke the letters duly granted, except for legal causes provided in the code. Appellant had been duly appointed and qualified as co-administrator of his wife's estate, had performed his duties faithfully, and there was no factual basis for his removal, and for appointment of administrator, d.b.n.

2. The Probate Court had no power to remove appellant as co-administrator upon motion filed by an attorney on behalf of co-administratrix not signed by her or her attorneys-of-record. Appellant, as surviving husband, was duly appointed, had filed his inventory of money and debts due to deceased, had court appraisers appraise personal property and performed all duties of his office and could not be lawfully removed without notice and a trial.

3. The Probate Court was not authorized to enter the amendatory order of May 17, 1956, appointing a second administrator d.b.n., after appellant on April 26, 1956, had perfected an appeal from the order of April 23, 1956, removing appellant and appointing first administrator d.b.n. The Court also ignored the statutory preferences which is in the same order for Letters of Administration d.b.n. as for Letters of Administration.

ARGUMENT

I

The Probate Court has limited jurisdiction and is forbidden under pretext of incidental power, or constructive authority, to exercise any jurisdiction whatever not expressly given by the Code. Appellant was entitled to administer his wife's estate.

Appellant, surviving husband, was regularly appointed and qualified co-administrator of the estate. The rule is well settled in this jurisdiction that an administrator can be removed only for legal causes specified in the statute, which confers power upon the probate court. Hawley v. Hawley, 72 App. D.C. 357, 114 Fed. 2d 505, and Perkins v. Berger, 79 U.S. App. D.C. 286, 145 F.2d 856. This court stated as a general rule that an Executor or Administrator can be removed only for causes specified in the statute. The court in the Hawley case, *supra*, enumerated these causes at 358-359 n. 8. These cases were cited with approval in Randall v. Bockhorst, 232 F. 2d 334, in an opinion of this court on January 5, 1956

and petition for rehearing, March 1, 1956, No. 12769. The court there said:

"Thus the court has more latitude in the choice of factors it may consider when granting rights of Administration than it has under the Hawley and Perkins cases in revoking an appointment once made."

In Diamantopoulos v. Glekas, 56 App. D.C. 151, 11 F.2d 200 this court at page 152, stated:

"It is true that the District Code permits of the exercise of discretion in such cases by the appointing court, but as was said by Chief Justice Alvey in Williams v. Williams, 24 App. D.C. 214, 217: 'The words at the end of the section, "and further subject to the discretion of the court as follows", have reference to the relations and conditions of persons prescribed in the succeeding sections. The right of administration is a valuable right, and those upon whom that right has been conferred by statute should not be deprived of it, except as the statute has provided.'"

"It is also established by the foregoing decision, and by Williams v. Williams, 25 App. D.C. 32, 4 Ann. Cas. 549, that where a person is entitled by law to act as administrator of an estate, and is a fit and qualified person, such person is entitled to the sole administration of the estate, and it is beyond the power of the probate court, over objections, to appoint a co-administrator who is a stranger to the estate."

This court reversed the lower court's appointment of administrator, and remanded the case with instructions to appoint appellant as such administrator.

II

The Probate Court had no power to remove appellant as co-administrator on the unsworn motion filed by an attorney on behalf of co-administratrix. As surviving husband, appellant was regularly appointed, had qualified and performed his duties and could not be legally removed without notice and a trial.

The order granting administration to appellant, as surviving husband, and his stepdaughter, Beatrice Rusk was properly entered by the Probate Court with consent of attorneys of record on November 22, 1954, upon consideration of the petition of Beatrice Rusk, filed October 7, 1954 and the answer and cross petition of appellant filed October 18, 1954; they qualified, filed their undertaking, and Letters of Administration issued to them on December 7, 1954.

Appellant had filed his inventory of money and debts due deceased (J.A. 10, 14), had court appraisers appraise property (J.A. 11, 12, 17), and otherwise performed his duties as administrator, and should not be deprived of his rights without a hearing and an opportunity of defending himself in court.

The case of Brosnan v. Brosnan, 53 App. D.C. 149, 152, 289 Fed. 547, 550, involved a controversy between the administrator and the other next of kin as to the ownership of property and the Probate court thought it was improper for the administrator to act as such and removed him without affording him an opportunity to introduce testimony in his defense. This court in reversing the lower court said:

"In the instant case the court heard no testimony, but acted upon the assumption that the mere existence of the controversy was sufficient to justify the removal of the administrator. In effect, therefore, the administrator was removed, not because he had in fact concealed assets of the estate, but because the other heirs charged him with doing so. This action under the circumstances was arbitrary, and if followed as a precedent

it would establish a very uncertain tenure of office for administrators. It is, of course, well known that disputes frequently arise in practice over the inventories and accounts of administrators, but the mere existence of such a dispute cannot serve as a ground for removing an administrator without a trial." See also *In re Estate of Patten*, 18 D. C. 400.

During the discussion on motion for removal of administrator, on December 20, 1955, the following occurred:

"The Court: * * The Court has to take steps to see that there is some neutral party appointed.

Mr. Malloy: But your Honor can't remove an administrator, with due respect to you, without a hearing and seeing just what the situation is.

The Court: This is the hearing.

Mr. Malloy: Well, I think it would be necessary to take testimony.

The Court: Oh, no. I don't think so. It can be done, but it isn't necessary." (J.A. 31, 32)

A commentary to removal of administrator in Probate Court is found in Mersch, *Probate Court Practice District of Columbia*, 2d ed. vol. 1, Sec. 1091, p. 446, wherein he states:

"Being a court of special jurisdiction with limited powers (Sec. 11-512) the probate court can remove an executor or an administrator only for cause found in the words of the statute, or by necessary inference therefrom; and, even then only after notice and a hearing, as will appear more fully in the paragraphs following."

III

The Probate Court had no authority to enter an amendatory order appointing new administrator d. b. n. after appellant had perfected an appeal from the original order removing appellant and appointing first administrator d. b. n. Statutory preferences were also ignored.

The Court ordered appellant removed as co-administrator of his wife's estate on April 23, 1956, and appointed John Marshall, administrator d. b. n. (J. A. 21). Appellant noted an appeal on April 26, 1956, and filed the required appeal bond (J. A. 23). Thereafter, on May 14, 1956, appellee Marshall requested release of his appointment as administrator d. b. n., as he had been transferred out of the city in connection with his employment. Thereupon the Probate Judge, without notice or an opportunity for appellant to be heard, entered an amendatory order on May 17, 1956, appointing appellee Ward, administrator d. b. n. (J. A. 24).

In the case of Lasier v. Lasier, 47 App. D. C. 80, 83, this Court said:

"The appellant on December 21, 1915, noted his appeal in open court, and on December 24, 1915, filed the required appeal bond. This perfected the appeal (Chisholm v. Cissell, 12 App. D. C. 203; Taylor v. Leesnitzer, 220 U. S. 90, 55 L. ed. 382, 31 Sup. Ct. Rep. 371), and removed the decree from the jurisdiction of the lower court to this court. After that it was not competent for the lower court to make any change in the decree."

To the same effect is, Purman v. Marsh, 49 App. D. C. 125, 261 Fed. 1005:

"Upon authority of decisions of this court and other courts we held, in Lasier v. Lasier, 47 App. D. C. 80, 83, that where a party noted his appeal in open court and filed the necessary appeal bond, which was later approved, it had the effect of removing the

judgment 'from the jurisdiction of the lower court to this court. After that it was not competent for the lower court to make any change in the decree.' In view of this the court had no authority to amend the judgment in the case before us so as to include rent. "

See also Newton, Attorney General of New York, et al. v. Consolidated Gas Co. of New York, 258 U.S. 165-177, 42 Sup. Ct. Report 264-267, wherein the court said:

"The amendatory decree of February was obtained long after appeals from the August decree had been granted and when the court had very limited power over the litigation. 'One general rule in all cases (subject, however, to some qualifications) is that an appeal suspends the power of the court below to proceed further in the cause. '"

Moreover, the preference for letters of administration d.b.n. is in the same order as for letters of administration. Mersch, Probate Court Practice District of Columbia, 2d ed., Vol. 1, Sec. 1122, p. 468.

On petition for rehearing in the case of Randall v. Bockhorst, supra, this Court said:

"The exercise of this discretion, however, must take account of the scheme of statutory preferences. The Court must have a sound reason to depart therefrom. Moreover, if there is a next-of-kin, who is not barred under a specific statutory disqualification and who applies for letters, a creditor or person not in any preferred classification may not be appointed. This restriction is dictated by the plain wording of section 20-216, which provides:

"' If there be no relations, or those entitled decline or refuse to appear and apply for administration, on proper summons or notice, administration may be granted to the largest creditor applying for the same; and if creditors neglect to apply, it may be granted at the discretion of the Court.' "

CONCLUSION

It is respectfully submitted that the Probate Court erred in revoking letters of administration, and in removing appellant as administrator of his wife's estate, and in appointing a neutral person administrator d.b.n., and that the orders of the lower court appointing appellees be reversed and the case remanded with instructions to appoint the appellant as administrator.

Respectfully submitted,

JOSEPH J. MALLOY

1406 G Street, N. W.
Washington 5, D. C.

Attorney for Appellant

(i)

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JOINT APPENDIX

PLEADING AND DOCUMENTARY EVIDENCE

19 [Filed June 4, 1956]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Probate Court

IN RE: ESTATE OF	:	Administration No. 86232
SUSANNA VIOLA GOLDSBOROUGH	:	Address of Petitioner
Deceased	:	1007 Heather Avenue
		Takoma Park, Maryland

[Filed Oct. 7, 1954, T. Cogswell, Register
of Wills, D. C., Clerk of Probate Court]

PETITION FOR LETTERS OF ADMINISTRATION

The petition of Beatrice E. Rusk respectfully represents to this
Honorable Court:

1. That your petitioner is an adult citizen of the United States and a resident of the State of Maryland and files this petition as the eldest daughter of Susanna Viola Goldsborough, deceased.

2. That said Susanna Viola Goldsborough was a citizen of the United States and a resident of the District of Columbia and departed this life on the 21st day of September, 1954, at her home in said District of Columbia, and that your petitioner has made diligent search and inquiry for a will of said decedent and has neither found one nor obtained any information that there was one, and verily believes that the decedent died intestate.

3. That the decedent left surviving her the following named persons, who are all adults, and who are her only heirs at law and next of kin: Harry A. Goldsborough, widower, residing at 1718 Independence Avenue, S. E.,
1718 INDEPENDENCE AVE
AND MILDRED STOUT
Beatrice E. Rusk, daughter and your petitioner, residing at 1007 Heather Avenue, Takoma Park, Maryland, Sara V. Cassel, a daughter, residing at 1010 Hollywood Avenue, Silver Spring, Maryland, Ralph Carlisle, a son residing at Pasadena, Maryland, Marion V. Padgett, residing at 5630 -

67th Avenue, East Pines, Riverdale, Maryland, LeRoy Carlisle, 1400 Harvard Street, N. W.

4. That decedent left real estate identified as premises 1718 Independence Avenue, S. E. , value is not known to petitioner. This property is assessed for \$2, 762. 00.

20 5. That said decedent left personal property located in the District of Columbia valued at approximately, in your petitioner's opinion at \$10, 000. 00, as follows: cash in home at date of death \$8, 900. 00, on deposit at American Security Trust \$500. 00, personal property in the home \$600. 00.

6. That decedent, so far as your petitioner is able to ascertain, left debts estimated at \$500. 00, besides the expenses of her funeral of about \$1, 000. 00.

7. That petitioner is advised that decedent's widower is not able to qualify for letters of administration and that as the oldest child capable of qualifying, she is entitled to apply for letters of administration in the estate of the decedent.

WHEREFORE, the premises considered, the petitioner prays:

1. That letters of administration be granted to this petitioner upon her filing an undertaking, with security approved by the Court.

2. That the Court grant petitioner such other and further relief as to the Court may seem just and proper.

/s/ Beatrice E. Rusk

/s/ Rudolph D'Agaris

/s/ Paul D. Taggart

Attorneys for Petitioner

I personally guarantee the payment of costs amounting to \$15. 00.

/s/ Rudolph D'Agaris

21 State of Maryland

County of Montgomery, SS:

Beatrice E. Rusk, being first duly sworn, deposes and says: that she has read the foregoing petition by her subscribed and knows the contents thereof, and that the same is true of her own knowledge, except

as to the matters therein stated to be alleged upon information and belief, and as to those matters who believes it to be true.

/s/ Beatrice E. Rusk

Subscribed and sworn to before me this 28th day of September, 1954.

/s/ Frances Potter, Notary Public
(SEAL)

[Filed Oct 18, 1954, T. Cogswell, Register of
Wills, D.C. Clerk of Probate Court]

29

ANSWER TO PETITION FOR LETTERS OF
ADMINISTRATION

The answer of Harry A. Goldsborough surviving husband of above named decedent to the petition of Beatrice E. Rusk for the grant of letters of administration to her upon the Estate of "Susanna Viola Goldsborough" respectfully shows to this Honorable Court:

1. He admits the allegations of relationship and residence of petitioner Beatrice E. Rusk but denies that she should be granted letters of administration on the Estate of decedent whose true name was Susannah Viola Goldsborough.

2. He admits the allegations of paragraph 2 of the petition except the name and death at her home and avers the fact to be that Susannah Viola Goldsborough died at the home of surviving husband 1718 Independence Avenue, S. E. , Washington, D. C.

3. He admits the relationship of the persons named in paragraph 3 but avers that in addition thereto decedent left surviving a daughter, Mildred Ella Stoute, residing at 1718 Independence Avenue, S. E. , Washington, D. C.

4. He denies the allegations of paragraph 4 and avers the fact to be that said real estate was purchased with money furnished by surviving husband and was held in trust by decedent and was used as a home by both. Your surviving husband claims said property as his own by

30 reason of the fact that title stood in her name solely for convenience and the entire cost of same was borne by surviving husband.

5. He denies the allegations of paragraph 5 except as to personal property in the home which in the opinion of your surviving husband is valued at about \$350.00. In addition thereto there is a 1936 Ford V8 automobile believed to be worth \$100.00.

6. He denies the allegations of paragraph 6, and avers that decedent as far as your surviving husband is able to ascertain left no debts.

7. He denies the allegations of paragraph 7 and avers that as surviving husband of decedent he is entitled to apply for letters of administration to issue to himself. That simultaneously herewith your respondent as surviving husband is filing a cross petition for letters of administration of the estate of Susannah Viola Goldsborough, deceased, fully setting forth therein his claim to the said letters.

WHEREFORE, having fully answered the petition of said Beatrice E. Rusk respondent prays that the said petition be dismissed with reasonable costs.

/s/ Harry Alexander Goldsborough
Surviving Husband

District of Columbia, ss:

Harry A. Goldsborough, being first duly sworn deposes and says: that he has read the foregoing answers to the petition of Beatrice E. Rusk, by him subscribed and knows the contents thereof; that the facts therein stated of his personal knowledge are true and those stated upon information and belief, he believes to be true.

/s/ Harry Alexander Goldsborough

31 Subscribed and sworn to before me this 15th of October, 1954.

/s/ A. M. Cromer, Notary Public
D. C.

/s/ Joseph J. Malloy

Attorney for Harry A. Goldsborough

(CERTIFICATE OF SERVICE)

32 [Filed Oct 18, 1954, T. Cogswell, Register
of Wills, D. C. Clerk of Probate Court]

CROSS PETITION FOR LETTERS OF ADMINISTRATION

The cross petition of Harry Alexander Goldsborough respectfully represents to this Honorable Court:

1. That your petitioner is an adult citizen of the United States and a resident of the District of Columbia, and files this petition as to the surviving husband of Susannah Viola Goldsborough, the above-named decedent.

2. That said Susannah Viola Goldsborough, also known as Viola S. Goldsborough, was a citizen of the United States and a resident of the District of Columbia and departed this life on the 21st day of September 1954, at 1718 Independence Avenue, S. E., in said District, and that your petitioner has made diligent search and inquiry for a will of said decedent and has neither found one nor obtained any information that there was one and verily believes that the decedent died intestate.

3. That the decedent left surviving her your petitioner, Harry A. Goldsborough, an adult, surviving husband, and following children who are all adults: Roy Upton Carlisle, 1435 Harvard Street, N. W., Washington, D. C.; Ralph Waldo Emerson Carlisle, Pasadena, Maryland, sons; and Beatrice E. Rusk, Takoma Park, Md.; Sarah V. Cassel, Silver Spring, Maryland; Marion Virginia Padgett, East Pines, Maryland, daughters; and another daughter Mildred Ella Stoute, 1718 Independence
33 Avenue, S. E., Washington, D. C., who are her only heirs-at-law and next of kin.

4. That the decedent, at the time of her death, was seized of the following real estate in the State of Maryland: Lot of land in the Cedar Hill Cemetery, as laid down in the Plat or Plan of said cemetery, and therein described as Sites 3 and 4, Lot No. 73 in Section 18, which property petitioner estimates to be worth about \$170.00; and which is free from encumbrance.

5. That said decedent left personal property valued approximately, in your cross-petitioner's opinion, at \$450.00, and consisting of personal effects and jewelry valued at about \$350.00 and a 1936 Ford V8 automobile

believed to be worth \$100. 00.

6. That at the time of the death of decedent, there stood in her name the following real estate in the District of Columbia, Lot No. 43 in Square No. 1097, recorded in the Office of the Surveyor of the District of Columbia, in Book 64 at page 21, improved by premises known as 1718 Independence Avenue, S. E., Washington, D. C., valued at approximately \$8,000. 00, which said decedent held in trust for cross-petitioner.

That decedent also held in trust for cross-petitioner, two lots in Prince George's County, State of Maryland, one more particularly described in deed dated April 12, 1938, recorded April 18, 1938, in the Land Records of said State and County in Liber No. 504 at Folio 1, et seq; and the other lot being more particularly described in deed dated August 31, 1945, recorded September 10, 1945 in Liber No. 781 at Folio 378, one of the Land Records of Prince George's County, Maryland, said lots being valued, in the opinion of your petitioner, at \$2,000. 00. The real estate described herein stands in the name of decedent, but this petitioner, surviving husband, claims said property as his own by rea-

34 son of the fact that title stood in her name only for convenience, and the entire cost of same was borne by petitioner. The petitioner intends to take such legal action as he may be advised to cause the property held in trust to be transferred to his name and declared to be his property. Aforesaid property is free from encumbrance.

7. That decedent as far as your petitioner is able to ascertain, after diligent search and inquiry, left no debts, and that your petitioner has paid from his personal funds the expenses of her funeral.

8. That your petitioner is advised, that as surviving husband of decedent, he is entitled to apply for letters of administration to issue to himself.

WHEREFORE, the premises considered, the petitioner prays:

1. That letters of administration be granted to this petitioner.
2. That your petitioner be permitted to qualify by giving an undertaking in the sum of \$1,000 only.

3. That the Court grant petitioner such other and further relief as to the Court may seem just and proper.

/s/ Harry Alexander Goldsborough

/s/ Joseph J. Malloy
Attorney for Petitioner

I personally guarantee the payment of costs
amounting to \$15.00.

/s/ Joseph J. Malloy, Attorney

35 DISTRICT OF COLUMBIA, SS:

I, Harry Alexander Goldsborough, do solemnly swear that I have read the foregoing cross petition to the petition for Letters of Administration by me subscribed and know the contents thereof; that the statements therein made of my own personal knowledge are true, and those made as upon information and belief I believe to be true.

/s/ Harry Alexander Goldsborough

Subscribed and sworn to before me this 15th day of October, 1954.

/s/ A. M. Cromer, Notary Public,
D. C.

[Filed Nov 22, 1954, T. Cogswell, Register of
Wills, D. C. Clerk of Probate Court]

41

ORDER GRANTING ADMINISTRATION

Upon consideration of the petition of BEATRICE E. RUSK, filed herein the 7th day of October, 1954, and the answer and cross petition of Harry A. Goldsborough, filed herein the 18th day of October, 1954, for letters of administration, and it appearing to the satisfaction of the court that Susanah Viola Goldsborough, deceased, departed this life intestate, it is by the Court this 22nd day of November, 1954:

ADJUDGED, ORDERED, AND DECREED that Harry A. Goldsborough and Beatrice E. Rusk be and they hereby are appointed administrators of the Estate of Susanah Viola Goldsborough, deceased, and that Letters of Administration on said estate issue to Harry A. Goldsborough and Beatrice

E. Rusk upon their filing an undertaking, with security approved by the Court, in the sum of Five Thousand Dollars, conditioned for the faithful performance of the trust in them reposed, provided Beatrice R. Rusk files a power of attorney in compliance with Title 20, Section 118 of the Code of Laws for the District of Columbia, and the sum of Five Hundred Dollars (\$500.00) is hereby allowed out of the personal estate to Harry A. Goldsborough, as surviving husband, for his own use, in accordance with law.

/s/ (Illegible)

Judge

Consent:

/s/ Paul D. Taggart

Attorney for Petitioner Beatrice R. Rusk

/s/ Joseph J. Malloy

Attorney for Cross Petitioner

Harry A. Goldsborough

42 [Filed Dec 7, 1954, T. Cogswell, Register of
Wills, D. C., Clerk of Probate Court]

Form No. 48

duplicate for files of the Probate Court only

DISTRICT OF COLUMBIA,

to wit:

THE UNITED STATES OF AMERICA

To all persons to whom these presents shall come,

GREETING:

KNOW YE, That administration of all the money, goods, chattels, rights, and credits of Susanah Viola Goldsborough late of the District of Columbia, deceased, is hereby granted and committed unto Harry A. Goldsborough and Beatrice E. Rusk of the District of Columbia and the State of Maryland, respectively.

WITNESS the Honorable Bolitha J. Laws, Chief
Judge of said Court, this 7th day of December,
A.D. 1954. Attest: /s/ T. Cogswell

Case No. 86232

Clerk of Probate Court

43 Form No. 56

Administration No. 86232

INVENTORY OF MONEY AND DEBTS DUE TO DECEASED

Due deceased from Harry A. Goldsborough	\$ 8,900.00
Due to deceased from Mildred Stoute (Estimated)	3,000.00 (B. E. R.)
Household furniture in premises of 1718 Independence Ave. S. E. , value unknown	
Two diamond rings in possession of Harry Goldsborough, value unknown	
Diamond wrist watch in possession of Harry Goldsborough, value unknown	
Gold bracelet in possession of Harry Goldsborough, value unknown	
Automobile on premises of 1718 Independence Ave. S. E. , value unknown	
Gold locket in possession of Harry Goldsborough value unknown	
Five hundred dollars checking account in possession of Harry Goldsborough	500.00

DISTRICT OF COLUMBIA, to wit:

Beatrice E. Rusk, Administratrix of Estate of Susanah V. Goldsborough late of District of Columbia, deceased, does solemnly swear that the foregoing schedule is a true and perfect inventory of all the Money belonging to the deceased, and of all the Debts due the said deceased, which have come to my hands or knowldge and that I will well and truly charge with all money and every such debt or debts as shall hereafter come to my knowledge or possession.

/s/ Beatrice E. Rusk
Administratrix

Sworn to and subscribed before me this 30th day of March, A. D.
1955.

/s/ F. J. B.

[Filed March 30, 1955,
T. Cogswell, Register of Wills,
D. C. , Clerk of Probate Court]

Register of Wills for the
District of Columbia
Deputy Clerk of the Probate Court

44 Form No. 56

Administration No. 86232

[Filed Apr. 14, 1955, T. Cogswell, Register
of Wills, D. C. , Clerk of Probate Court]

INVENTORY OF MONEY AND DEBTS DUE TO DECEASED

No money or debts due to deceased.

The \$8900. 00 listed by co-administrator was personal property belonging to Harry A. Goldsborough, husband of decedent, and is not money due to deceased.

No money was due to deceased from Mildred Stoute, her daughter. Mildred Stoute did not owe deceased \$3000. 00, or any other amount, and should not be listed as due.

The \$500. 00 checking account listed by co-administrator was proceeds from U. S. Bonds owned by husband Harry A. Goldsborough and paid direct by the bank to the funeral director. The balance due Lee Funeral home was paid by affiant Harry A. Goldsborough personally.

Administrator Harry A. Goldsborough personally took the two diamond rings, the gold locket and the gold bracelet for appraisal at the office of the Register of Wills. He also had the Court appraisers appraise all other property of deceased, including household furniture and automobile at premises 1718 Independence Avenue, S. E. , Washington D. C.

DISTRICT OF COLUMBIA, to wit:

Harry A. Goldsborough, Administrator of the Estate of Susanah Viola Goldsborough late of the District of Columbia, deceased, does solemnly swear that the foregoing schedule is a true and perfect inventory of all the Money belonging to the deceased, and of all the Debts due the said deceased, which have come to my hands or knowledge and that I will well and truly charge myself with all money and all and every such debts or debts as shall hereafter come to my knowledge or possession.

/s/ Harry A. Goldsborough
Administrator

Sworn to and subscribed before me this 13th day of April, A. D. 1955

/s/ A. M. Cromer, Notary Public

(SEAL)

D. C.

45

RETURN OF APPRAISERS

[Filed May 19, 1955, T. Cogswell, Register
of Wills, D. C., Clerk of Probate Court] Administration No. 86, 232

In execution of the foregoing warrant, issued out of the United States District Court for the District of Columbia to us directed, and in pursuance of the oath or affirmation by us taken and subscribed thereunder, we proceeded, after due notice to Harry A. Goldsborough and Beatrice E. Rusk, parties in interest, on the 27th day of April, A. D. 1955, and from day to day thereafter, in the presence of a representative of the above named the admrs. at 1718 Independence Ave., S. E. and Register of Wills to appraise, in dollars and cents, and item by item, the goods, chattels, and personal estate of the said Susanah Viola Goldsborough, deceased, excepting money and debts due to said decedent; after which we delivered to Joseph J. Malloy, one of the attorneys for the said admrs. a schedule of the said appraisal, the totals of the same being--

Household effects	\$376. 75
Jewelry	63. 00
Automobiles	250. 00
TOTAL	<u>\$689. 75</u>

/s/ Cyril J. Smith (SEAL)

/s/ Joseph L. Spellman (SEAL)

Appraiser's fee \$12. 00

Appraisers.

5/19/55

46 Form No. 10 WARRANT TO APPRAISERS AND RETURN

THE PRESIDENT OF THE UNITED STATES TO Cyril J. Smith and Joseph L. Spellman, Greeting:

KNOW YOU, That in confidence of your prudence and fidelity, you are by these presents appointed and invested with power and authority, jointly to appraise the goods, chattels, and personal estate of SUSANAH VIOLA GOLDSBOROUGH late of the District of Columbia, deceased, so

far as they shall come to your sight and knowledge, each of you having first taken the oath (or affirmation) hereto annexed, a certificate whereof you are to return, under your hands and seals. You will also make and certify a schedule of the said goods, chattels, and personal estate by you appraised, in which you are to set down in a column or columns opposite to each article, the value thereof, in dollars and cents, and deliver the same to the ADMINISTRATORS to be returned to him as a part of his inventory of the said estate.

WITNESS, the Honorable Bolitha J. Laws, Chief
Judge of said Court, this 27th day of April,
A. D. 1955

Attest: /s/ Arthur P. Smith
Register of Wills for the District
of Columbia, Deputy Clerk of
the Probate Court

(Seal of Court)

DISTRICT OF COLUMBIA, to wit:

We do swear or (solemnly, sincerely, and truly affirm) that we will well and truly, without partiality or prejudice, value and appraise the goods, chattels, and personal estate of Susanah Viola Goldsborough, deceased, so far as the same shall come to our sight and knowledge, and will, in all respects, perform our duty as appraisers to the best of our skill and judgment. So help us God.

/s/ Cyril J. Smith

/s/ Joseph L. Spellman

Sworn to affirmed and subscribed this 27th day of April, A. D. 1955.

/s/ Arthur P. Smith

Register of Wills for the District
of Columbia, Deputy Clerk of
the Probate Court

/s/ Harry A. Goldsborough, 1718 Independence Ave., S. E.

/s/ Joseph J. Malloy, Attorney for above

/s/ Beatrice E. Rusk, 1007 Heather Ave., Takoma Park, Md.

/s/ Paul D. Taggart, Attorney for above

47 [Filed May 27, 1955, T. Cogswell, Register of
Wills, Clerk of Probate Court]

MOTION FOR REMOVAL OF ADMINISTRATOR

Now comes Beatrice E. Rusk, by her attorney Foster Wood and moves the Court to remove Harry Goldsborough as administrator for the reasons following:

1. That on the 7th day of December, 1954, letters of administration were granted to Beatrice E. Rusk and Harry Goldsborough upon the estate of Susana V. Goldsborough, deceased, and they qualified by filing a general undertaking in the penalty of \$5,000.00 each.

2. That said Harry Goldsborough as failed and neglected to file his Inventory of Money and Debts Due to Deceased.

3. That said Harry Goldsborough has failed and neglected to have the jewelry and personal property in his possession appraised.

4. That said Harry Goldsborough claims that the sum of \$8,900.00 belonging to the estate is his personal property, and said Harry Goldsborough should be removed as administrator, so that suit may be instituted against him on behalf of the estate [to] determine whether said sum of \$8,900.00 belongs to the estate or is his personal property.

5. That your petitioner has filed her INVENTORY OF MONEY AND DEBTS DUE TO DECEASED, wherein it appears that said Harry A. Goldsborough is indebted to the estate in the sum of \$8,900.00. That said INVENTORY further shows the sum of \$3,000.00 due the estate by Mildred Stoute, and jewelry in the possession of Harry Goldsborough. That said Harry Goldsborough refused to execute said INVENTORY as co-administrator and denied said money to be due by him as stated therein.

/s/ Foster Wood

Attorney for Petitioner

MEMORANDUM OF POINTS AND AUTHORITIES

District of Columbia Code Sec. 20 - 107 - 603, Sec. 18, - 301.

(NOTICE)

* * *

(Paid \$5.00 May 27, 1955)

49 (CERTIFICATE OF SERVICE)

50 [Filed June 2, 1955, T. Cogswell, Register of
Wills, Clerk of Probate Court]

ANSWER OF HARRY A. GOLDSBOROUGH TO
MOTION FOR REMOVAL OF ADMINISTRATOR

Now comes, HARRY A. GOLDSBOROUGH, and for answer to the
Motion for his removal as administrator, respectfully states to the Court:

1. He admits the allegations of paragraph 1 of the Motion.
2. He denies the allegations of paragraph 2 and avers that he filed
his inventory herein on April 14, 1955.
3. He denies the allegations of paragraph 3 of the Motion, and avers
that the jewelry has been appraised at \$63. 00; the automobile at \$250. 00,
and the other personal property and household effects at \$376. 75 by the
appraisers of this Court.
4. He denies the allegations of paragraph 4, and avers that he has
carried out his duties as administrator and filed inventory herein, and the
co-administrator well knows that the money mentioned does not belong
to the estate but is the personal property of Harry A. Goldsborough.
5. He admits that co-administrator Beatrice Rusk also filed inven-
tory herein, but he denies that he is indebted to the estate in the sum of
\$8900 or any other amount as is well known to the co-administrator, Bea-
trice E. Rusk, and as shown by his inventory filed herein.
- 51 6. He denies each and every other allegation in the Motion except
those herein specifically admitted.

Further answering, administrator Harry A. Goldsborough states
that he filed inventory herein on April 14, 1955, wherein he stated under
oath:

"No money or debts due to deceased.

"The \$8900 listed by co-administrator was personal property be-
longing to Harry A. Goldsborough, husband of decedent, and is not
money due to deceased.

"No money was due to deceased from Mildred Stoute, her daughter.
Mildred Stoute did not owe deceased \$3000. 00 or any other amount,
and should not be listed as due.

"The \$500 checking account listed by co-administrator was proceeds from U. S. Bonds owned by husband Harry A. Goldsborough and paid direct by the bank to the funeral director. The balance due Lee Funeral Home was paid by affiant Harry A. Goldsborough personally.

"Administrator Harry A. Goldsborough personally took the two diamond rings, the gold locket and the gold bracelet for appraisal at the office of the Register of Wills. He also had the Court appraisers appraise all other property of deceased, including household furniture and automobile at premises 1718 Independence Avenue, S. E., Washington, D. C."

That administrator Harry A. Goldsborough personally took the jewelry to the Office of the Register of Wills and had the same appraised by the Probate Court Appraisers; that he personally made arrangements for the appraisers to go to 1718 Independence Avenue, S. E., Washington, D. C. to appraise all other items of personal property belonging to the estate of decedent; that Court Appraisers Cyril J. Smith and Joseph L. Spellman made appraisal of the property, and made a return which was filed in this Court in the above entitled cause on May 19, 1955, showing the value of the assets of the estate.

52 That co-administrator Beatrice E. Rusk has failed and refused to cooperate with this administrator, and has failed and refused to sign the schedule prepared and submitted by aforesaid Court Appraisers; that administrator, Harry A. Goldsborough is ready and willing to sign the schedule of the assets as listed by aforesaid Court Appraisers on May 19, 1955, and respectfully requests that co-administrator Beatrice E. Rusk be ordered by this Honorable Court to sign said schedule or resign or be removed by this Honorable Court as co-administrator of said estate.

That administrator Harry A. Goldsborough listed in his inventory and in his cross petition for letters of administration herein, the assets of the estate of decedent; that there are no other assets belonging to said estate.

That said co-administrator Beatrice E. Rusk is endeavoring to harass and annoy administrator Harry A. Goldsborough and knows full well that

he has listed all assets belonging to the estate.

WHEREFORE, administrator Harry A. Goldsborough prays that the Motion of Beatrice E. Rusk be denied and that the costs herein be assessed against her personally.

/s/ Harry A. Goldsborough

/s/ Joseph J. Malloy

/s/ Gerald J. Miller

Attorneys for Harry A. Goldsborough
1406 G Street, N. W.
Washington, D. C.

(CERTIFICATE OF SERVICE)

54 [Notations on Front of Case Jacket, Administration No. 86232]

GOLDSBOROUGH-SUSANNA VIOLA, Deceased

June 15, 1955	Petition for removal of Administrator argued and continued to June 16, 1955 for testimony (D. L. Harrison) Curran, J.
June 17, 1955	Petition for removal of Administrator argued and continued for settlement to June 20, 1955, Judge Curran
June 20, 1955	Petition for removal of Administrator continued for testimony to July 18, 1955 before any Judge sitting in Motions Court, Judge Curran
Oct. 4, 1955	For removal of administrators continued until November 2, 1955, reported by Delehanty, Youngdahl, J.
Dec. 20, 1955	Petition for removal of Administrator argued and submitted, reported by M. Dennis, Youngdahl, J.

Recorded in Docket of Claims No. 43, Folio No. 241

55 [Filed Aug. 8, 1955, T. Cogswell, Register of
Wills, D. C., Clerk of Probate Court]

Form No. 57

No. 86232

We, the undersigned, appointed by the said Court to examine and appraise the personal estate of SUSANAH VIOLA GOLDSBOROUGH late of the District of Columbia, deceased, do hereby certify that the following schedule is a true and correct appraisal of said estate in so far as it has come to our knowledge, a return of which we have made to the Court of even date herewith:

P. 16906

At 1718 Independence Ave., S. E. 2nd Floor Rear Room:

Single maple bed, spiral spring, mattress, pillows and bedding	\$ 10. 00
Maple chiffonier	10. 00
Metal single door clothing locker	4. 00
Wing back arm chair, as is, no value	
Arm rocker, upholstered back and seat, as is	. 75

Center Room:

Bleached and toned mahogany single bed, box spring, sponge rubber mattress, pillows	45. 00
Maple bureau	15. 00
Metal double door clothing locker	6. 00
Side chair, fabrikoid seat, finish as is	1. 00
Linoleum floor covering, no value	

Front Room:

2-Tone walnut suite: double bed, spiral spring, mattress, chiffonier and bureau, with unframed mirror, dresser case with mirror, bench with fabrikoid covered top, as is	60. 00
Double door metal wardrobe with locks	9. 00
Linoleum floor covering, no value	
New Home sewing machine, treadle type	5. 00

1st Floor, Living Room:

3-Piece suite: settee, 1 wing back and 1 large lounging chairs, tapestry covered, print cloth slip covers	40. 00
---	--------

1st Floor, Living Room--Continued:

	Coffee table, galleried top, toned mirror glass safety top	\$ 5.00
	Large circular gilt framed mirror	9.00
56	Room size fabric rug, as is, no value	
	Small decked stand, metal and glass base floor lamp and shade	3.50
	Philco television set	60.00
	Small wrought iron base plant stand with tile top	.50

Dining Room:

	Walnut suite: sideboard, single door china press with applied grilling, extension dining table, serving table, 1 arm and 5 side chairs with slip seats	50.00
	Table-desk with drawer, finish as is	4.00
	Radio cabinet base	2.00
	Room size linoleum floor covering	1.00

Kitchen:

	Metal enamel top dinette table, as is, set of 4 dinette chairs, lyre backs, as is	10.00
	Single door plate Locker	3.00
	Wooden enamel kitchen cabinet with tambour, with draw shelf, as is	8.00
	Prima spin dryer washing machine	5.00
	Metal glider-swing, as is, arm rocker, as is	10.00
	Davenport and table, no value	

At Register of Wills, Jewelry:

	18-Karat white gold and diamond ring	22.50
	18-Karat white gold ring set with solitaire diamond and 2 flanking sapphires	22.50
	14-Karat gold bracelet set with 3 imitation stones	10.00
	Gold locket and plated chain	8.00
	1936 Ford 4-door sedan, DeLuxe	250.00

TOTAL

\$689.75

RECAPITULATION

Household effects	\$376. 75
Jewelry	63. 00
Automobile	250. 00
TOTAL	\$689. 75

Witness our hands and seals this 19th day of May, A.D. 1955

/s/ Cyril J. Smith (SEAL)

/s/ Joseph L. Spellman (SEAL)

Appraisers.

DISTRICT OF COLUMBIA, to wit:

We, the undersigned, Harry A. Goldsborough and Beatrice E. Rusk, Administrators of the estate of Susanah Viola Goldsborough, late of the District of Columbia, deceased, do solemnly swear that the foregoing schedule is a true and perfect Inventory of the Goods, Chattels, and Personal Estate of said deceased, except money belonging to, and debts due, the deceased, that have come to our hands or possession at the time of the making thereof, and that what hath since, or shall hereafter, come to our hands or possession we will return an additional inventory of; that we know of no concealment of any part of the deceased's estate by any person whatsoever, and that if we shall hereafter discover any concealment, or suspect any to be, we will acquaint the Court with the same.

/s/ Harry A. Goldsborough

Sworn to and subscribed before me this 8th day of August, A.D. 1955

/s/ (Illegible)

Register of Wills for the District of
Columbia, Deputy Clerk of the Probate
Court.

Note - co-administrator Beatrice E. Rusk has been requested by her co-administrator to sign and make oath to this inventory and has declined to do so.

/s/ Joseph J. Malloy

Attorney of record

- 58 [Filed Aug. 8, 1955, T. Cogswell, Register of Wills, D. C., Clerk of Probate Court]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

the 8th day of August, 1955

Re: Estate of Susanna Viola Goldsborough, Deceased

Administration No. 86, 232

The Clerk of said Court will please withdraw the appearance of Rudolph N. D'Agaris and Paul D. Taggart as attorneys for Mrs. Beatrice E. Rusk, co-administratrix.

Leave to withdraw granted August 10, 1955.

Bolitha J. Laws, Chief Judge

By Melvin J. Marques

Deputy Register of Wills

Consented to:

/s/ Beatrice E. Rusk

/s/ Rudolph N. D'Agaris

/s/ Paul D. Taggart

Approved:

Judge

- 61 [Filed Jan. 11, 1956, T. Cogswell, Register of Wills, D. C. Clerk of Probate Court]

MEMORANDUM

It appears that the daughter and husband of deceased are unable to resolve their controversy as to what property left by decedent should properly be administered in the estate.

In view of this conflict, it seems to the Court that it is not proper that either one of them serve as administrator or administratrix. Therefore, the Court believes a neutral person should be appointed so that the conflicts may be properly resolved.

Counsel for petitioner will prepare an order consistent with the conclusion reached herein, said order to contain provisions for the removal of the present administrators, for the appointment of a neutral administrator to be designated by the court, and for the posting of an appropriate

undertaking by such neutral administrator, also to be specified by the court.

/s/ Luther Youngdahl

Judge

January 10, 1956.



62 [Filed Apr. 23, 1956, T. Cogswell, Register
of Wills, D. C. Clerk of Probate Court]

ORDER

This cause came on to be heard upon the motion of Beatrice E. Rusk for removal of her co-administrator, Harry A. Goldsborough, and upon consideration thereof, the answer of Harry A. Goldsborough thereto, and argument of counsel thereon in open Court, and it appearing to the Court that the aforesaid administrators are daughter and husband of the deceased and have filed separate inventories herein, and they are unable to agree as to what property left by decedent should properly be administered in the estate, and in view of this conflict, the Court by memorandum filed herein ruled that it is not proper for either one of them to serve as administrator or administratrix, and that a neutral person should be appointed so that the conflict may be properly resolved, it is by the Court this 23rd day of April, 1956:

ORDERED, that the letters of administration issued herein on the seventh day of December, 1954, designating Harry A. Goldsborough and Beatrice E. Rusk, co-administrators of the Estate of Susanah Viola Goldsborough, deceased, are hereby revoked and that the said administrator and administratrix be and they are hereby removed, and it is further

ORDERED, that John Marshall, Union Trust Building, be and he hereby is appointed as sole administrator d. b. n. of this estate and that letters of administration d. b. n. are granted and shall issue to him provided he first files his undertaking in the penal sum of Two Thousand dollars (\$2000. 00) with surety approved by the Court, conditioned for

the faithful performance of his trust, provided that before accepting assets in excess of \$2, 000 he shall first apply to this Court for additional undertaking as may be required.

/s/ Luther Youngdahl

Judge

No Objection

/s/ Foster Wood

Attorney for Beatrice Rusk

63 [Filed Apr. 26, 1956, T. Cogswell, Register of
Wills, D. C., Clerk of Probate Court]

NOTICE OF APPEAL

Notice is hereby given this 26th day of April, 1956, that Harry A. Goldsborough hereby appeals to the United States Court of Appeals for the District of Columbia from the order and judgment of this Court entered on the 23rd day of April 1956, removing appellant Harry A. Goldsborough as administrator of the above estate, and revoking letters of co-administration issued herein to him on December 7, 1954.

/s/ Harry A. Goldsborough

/s/ Joseph J. Malloy

Attorney for co-Administrator
Harry A. Goldsborough

(Paid \$5. 00 Apr. 26, 1956)

64 [Received May 16, 1956, Chambers of
Judge Youngdahl]

COVINGTON & BURLING
Union Trust Building
Washington 5, D. C.

May 14, 1956

Judge Luther B. Youngdahl
U.S. District Court for the District of Columbia
United States Courthouse
3rd & John Marshall Place
Washington, D. C.

Dear Judge Youngdahl:

Re: Estate of Susannah V. Goldsborough

I sincerely appreciated your kindness in appointing me to act as administrator d. b. n. in the above-entitled case. I had hoped to be able to fulfill the duties of the position and carry out the instructions of the Court in the manner appropriate for the situation.

My employers have since assigned me to work in Boston, Massachusetts, for an indefinite period. In view of this absence from Washington, D. C., I do not feel that I should attempt to assume the duties of administrator for this estate. From my present knowledge of the case, I anticipate that the administrator will be required to confer with individuals situated in or near the District of Columbia, and take charge of assets located in the same area, as well as take part in, or initiate, legal proceedings in Courts located in the District. Rather than attempt a job which I could not properly discharge, I hereby request that I be relieved of the appointment.

I am reluctant to make this request for I would prefer to carry out any responsibility given to me, but believe that the interests of good administration will be furthered if the work is in the hands of someone who is able to devote the requisite time and attention to it.

Yours very truly,

/s/ John B. Marshall

cc: Register of Wills
Joseph J. Malloy, Esq.
Foster Wood, Esq.

65 [Filed May 17, 1956, T. Cogswell, Register
of Wills, D. C., Clerk of Probate Court]

ORDER AMENDING ORDER OF APRIL 23, 1956,
BY APPOINTING NEW ADMINISTRATOR D. B. N.
IN THE PLACE AND STEAD OF JOHN MARSHALL

This Court having by order dated April 23, 1956 appointed John Marshall administrator d. b. n. of the above captioned estate in the place and stead of Harry A. Goldsborough and Beatrice E. Rusk, removed as administrators, and the said John Marshall having informed the Court that he is unable to serve as such, it is by the Court this 17th day of May, A. D. 1956,

ORDERED, that so much of the order of this Court dated April 23, 1956 as appoints John Marshall sole administrator d. b. n. of this estate be, and the same is vacated and held for naught, and it is further

ORDERED, that WILLIAM T. WARD be and he hereby is appointed sole administrator d. b. n. of this estate and that letters of administration d. b. n. are granted and shall issue to him provided he first files his undertaking in the penal sum of Two Thousand Dollars (\$2,000) with surety approved by the Court, conditioned for the faithful performance of his trust, provided further that before accepting assets in excess of \$2,000 he shall first apply to this Court for such additional undertaking as may be required.

In all other respects said order dated April 23, 1956 shall remain in full force and effect.

/s/ Luther Youngdahl
Judge

69 [Filed May 28, 1956, T. Cogswell, Register
of Wills, D. C., Clerk of Probate Court]

NOTICE OF APPEAL

Notice is hereby given this 28th day of May, 1956, that HARRY A. GOLDSBOROUGH hereby appeals to the United States Court of Appeals for the District of Columbia from the order of this Court entered on the 17th day of May, 1956, amending order of April 23, 1956, by appointing WILLIAM T. WARD new administrator d. b. n. in the place and stead of JOHN MARSHALL and in all other respects ordering judgment dated April 23, 1956, to remain in full force and effect.

Notice of Appeal was heretofore given from the order and judgment of this Court entered on April 23, 1956.

/s/ Joseph J. Malloy

Attorney for Harry A.
Goldsborough

Copy of the foregoing Notice of Appeal accepted this 28th day of May, 1956.

/s/ William T. Ward
Administrator, d. b. n.

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

[Filed May 10, 1956, T. Cogswell,
Register of Wills, D. C., Clerk of
Probate Court]

Washington, D. C.
December 20, 1955

1

MOTION

The above-entitled matter came on for hearing at 11:20 a. m. before HONORABLE LUTHER W. YOUNGDAHL, United States District Judge.

APPEARANCES:

JOSEPH J. MALLOY, Esq., representing

Harry A. Goldsborough, et al.

FOSTER WOOD, Esq., representing

Beatrice E. Rusk, et al.

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PROCEEDINGS

* * * MR. WOOD: May it please Your Honor, Mrs. Goldsborough died last September, 1954. She left surviving her a husband and six children by a prior marriage. * * *

All of the children except one consented to the appointment of one of the children as administratrix of the estate, that is, Beatrice E. Rusk. All the children with the exception of one filed consent to her appointment, and she was appointed administrator.

* * * * *

Thereafter, the husband, Harry A. Goldsborough, came in and objected to her appointment and asked that he be appointed. Her appointment was then set aside, and both she and Harry A. Goldsborough were appointed co-administrators of this estate.

3 Thereafter, it appears that there were some negotiations. I did not represent any of the parties at the time of which I am speaking. There was a Maryland attorney who represented some of the children, and present counsel for Mr. Goldsborough represented Mr. Goldsborough and one of the children who was living in the house. There were some negotiations, and as a result of those a written agreement was prepared but it was not signed by any of the children except one.

It was signed by Harry A. Goldsborough, and it was prepared to be signed by all of the children but only one child signed this agreement so that the agreement was not entered into by all of the parties.

Under this agreement it was purported to transfer to Harry A. Goldsborough \$8,000 which he had in his possession belonging to the decedent and in exchange for that he agreed to deed his interest in the properties to the children.

He did have an interest by courtesy in the Maryland property, but under the District laws he had no interest in the real estate in the District of Columbia at all. But it was endeavored to make this agreement.

* * * * *

4 My client filed an inventory of money and debts due in which she set forth that there was \$8,900 in cash due the estate by Harry A.

Goldsborough, \$3,000 due the estate by Mildred Stoute, who is one of the daughters, and she also set out the automobile which had not been appraised, and she set out the jewelry which had not at that time been appraised but which was in the possession of the other administrator and he had not had it appraised. She filed that inventory.

Now, another inventory was filed by the other administrator in which he didn't mention this \$8,900 or the \$3,000.

* * * * *

5 Now, we contend this, Your Honor. We contend two things. I say first that it is impossible for these two co-administrators to administer this estate together. It is an impossibility.

I say that Harry A. Goldsborough should be removed as an administrator. * * * * *

If Your Honor wishes to remove both of them it is perfectly satisfactory to us, and appoint some third disinterested party. But I do

6 strenuously urge that Harry A. Goldsborough be removed. * * *

MR. MALLOY: * * * Mr. Wood has of course stated to Your Honor the facts as he learned of them after he got into the case. I was in the case from the beginning and I will state to Your Honor what the true situation and the true picture is.

Mrs. Goldsborough died on September 21. Sometime before her death she had stated that she wanted the money which was in the house, that it belonged to Harry. The family, the children, were around the house.

Now, prior to her death this \$8,900 of which he is talking about was deposited in a bank here in the name of Harry A. Goldsborough personally.

Now, Mr. Wood says that it was set aside. Again the record will show exactly what occurred. Harry Goldsborough prepared a petition -- I prepared the petition for him -- requesting that he be appointed administrator.

We had been in contact with the lawyers of these other people, Mr. Taggart and Mr. A'Garts, and I presented a petition to the office of the

Registrar of Wills, and the same day, or the afternoon previous to my presentation, a petition had been filed by Mrs. Rusk, the daughter, asking for the appointment of herself as administratrix.

7 I thereupon withdrew my petition. It wasn't filed. I then filed an answer to the petition of Mrs. Rusk and a cross-petition, asking for the appointment of Harry Goldsborough, the husband.

Now, the petition of Mrs. Rusk stated that there were five children. It didn't mention the daughter, Mrs. Stoute. My cross-petition stated who the heirs were, that in addition to those mentioned there was also Mrs. Stoute.

Now, a notice was sent from the Registrar of Wills' office to Mr. Goldsborough but through inadvertence the order came through although the cross-petition of Mr. Goldsborough had been filed. Then Mr. Cogswell, the Registrar of Wills, filed a petition of his own in the case stating that through inadvertence the petition of Mrs. Rusk had been granted, and that was how the appointment was set aside.

We then came into the matter, and the matter came on for hearing before Mr. Justice Holtzoff in this court on the petition of Mrs. Rusk praying for her appointment as administratrix and on the cross-petition of Mr. Goldsborough as the widower, as surviving husband of the decedent. Mr. Taggart and Mr. A'Garts were representing Mrs. Rusk at the time.

8 When we came on to argue the matter before Mr. Justice Holtzoff, there was the suggestion made that in order to save a possibility of contention they both be appointed co-administrators, and thereupon we agreed and there was entered in this case on November 23, 1954, so that the administration year is now past, a consent order, signed by Justice Holtzoff, consented to by Mr. Taggart and myself.

Now, at that time there was the contention on behalf of Mr. Goldsborough that he owned all of the property in Maryland and the property here, and he stated that it was held in his wife's name and she was holding it in trust for him.

On the other hand, Mrs. Rusk was contending that the \$8,900 which was on deposit and had been on deposit in the name of Harry A. Goldsborough prior to the death of Mrs. Goldsborough was part of the estate. Consequently there was still the argument with reference to it.

Then the parties got together and they decided that possibly if they didn't have two lawyers they could maybe work it out. So they then got Mr. Goldsborough -- Mr. Goldsborough, by the way, is a man of very little education but he has had an honorable career. He had served in the Navy and he had lived with his wife for some thirty years and raised these children, he being the man who had worked, and it was all his money. He was the only one who had worked and earned this money which they were contending about. So they thereupon got Mr. Goldsborough to write

9 a letter to me stating that I was no longer in the case and that they would then go to the other lawyer's office, who was then located in Maryland, and settle the whole matter.

They then did go to the office of Mr. A'Garts and Mr. Taggart in Maryland and they then entered into an agreement which is signed by this Mrs. Rusk, Beatrice E. Rusk, and by Harry A. Goldsborough, and it stated that Mrs. Rusk and the other children -- all of these at that time, I may say, if Your Honor please, were represented by Mr. A'Garts and Mr. Taggart--

THE COURT: This agreement wasn't executed by the other children?

MR. MALLOY: Well, the attorneys were representing them all.

THE COURT: But they didn't sign the agreement?

MR. MALLOY: That is true.

THE COURT: So that this can't bind the other children.

MR. MALLOY: I think it can, if Your Honor please, because of the fact that you will notice in the last line there it says "within five days from date hereof," in other words, on the strength of that, the attorney in Maryland, who is the attorney of record at that time in this case, so that it wasn't a case of going outside the record. He was the attorney in the case

10 and they were handling this estate, so-called.

Now, there was the argument as to who owned these things and so

in order to obviate the necessity of going to court they did settle their differences in that way, so that they were withdrawing the claim to the money and he was then giving them the property.

THE COURT: If the other children didn't sign it they couldn't be bound by it.

MR. MALLOY: But the deed was signed and filed, which you will see here.

THE COURT: Yes, I understand that is part of the consideration but it could only bind the parties who signed it.

MR. MALLOY: But they have the deed. Now, it is all gone. He has transferred all his right, and he had of course the right there to the estate in Maryland even if it wasn't all his.

THE COURT: It very much looks to me as though there ought to be a neutral administrator to determine what the legal rights of the various parties are. Apparently these two people are in sharp conflict as to what property belongs to the estate, and I can't determine that on motion. I can't decide that on motion.

MR. MALLOY: That is quite right. I think Your Honor can see this if you will just see what is before you now.

* * * * *

You have a situation where they had worked this all out until Mr. Wood came into the case again, and now she has hedged on her agreement with them. She signed that and she is the party now who is asking that he be removed.

The whole situation comes down to a point that the reason she wants him removed is to sue him. Now, these children can sue him if he had any money belonging to the estate whether he was the administrator or not.

It seems to me it is unfair to be asking the Court after she has taken advantage of the agreement and through her lawyer, who is the attorney of record in the case, to get the property from him, to agree on certain things, to have him make a deed for property which he claims to be his own, and then to ask that he be removed so that she can sue him. When you boil it down that is the whole reason for the request for the appointment.

THE COURT: I can't determine on this motion who the property belongs to. That can only be determined by a trial with the evidence brought in unless the parties can agree, and obviously this estate cannot be administered properly by these two people.

MR. MALLOY: They --

13 THE COURT: Let me finish, please. They are quarreling with each other as to who belongs to the property. There is a dispute between them. Their interests are inimical to one another. Therefore, there has to be some neutral party stepping in here to have the claims properly presented to the Court to determine who belongs to what.

MR. MALLOY: That is a matter that they could do without any removal. It is an important thing for a man to be --

THE COURT: They apparently are quarreling with each other and not getting anywhere.

MR. MALLOY: They both signed this.

THE COURT: That doesn't bind these other children.

MR. MALLOY: The other children are not the ones who are asking for the removal. She is the one. Certainly it binds her.

THE COURT: Is that correct, that the other children aren't asking for the removal?

MR. WOOD: Yes, they are. I have some of them right in court.

MR. MALLOY: I have another one who is one of the children, too. She is the only one who has signed this petition asking for removal. If they wanted to sue Harry Goldsborough--

14 THE COURT: Something has got to be done. It can't go on this way. Something has got to be done to wind up this estate. The Court has to take steps to see that there is some neutral party appointed.

MR. MALLOY: But Your Honor can't remove an administrator, with due respect to you, without a hearing and seeing just what the situation is.

THE COURT: This is the hearing.

MR. MALLOY: Well, I think that it would be necessary to take testimony.

THE COURT: Oh, no. I don't think so. It can be done, but it isn't necessary.

MR. MALLOY: The only thing before you is the petition signed by Mrs. Rusk asking for their removal. We show that she did agree and through her attorney of record, who was then her attorney of record in the case, and I submit it is unfair to have two administrators and then one of them agree and ask to dismiss the other.

THE COURT: How about referring this matter to the man who is in charge of probate matters to see if he can get it ironed out?

MR. MALLOY: That would be agreeable.

MR. WOOD: Let me say this, Your Honor. I have had this matter up with Mr. Cogswell informally, and this motion was filed, say, eight or nine months ago, and it has been continued and continued.

* * * * *

17 THE COURT: I will have to take the matter under advisement and study the jacket.

(Thereupon, at 11:50 o'clock a. m. the hearing was adjourned.)

United States Court of Appeals
For the
District of Columbia Circuit

FILED OCT 12 1956

BRIEF FOR APPELLEES

Joseph W. Stewart
CLERK

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 13, 380

HARRY A. GOLDSBOROUGH,
Appellant,
v.
JOHN MARSHALL, ET AL.,
Appellees.

No. 13, 381

HARRY A. GOLDSBOROUGH,
Appellant,
v.
WILLIAM T. WARD, ET AL.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FOSTER WOOD

1424 K Street, N.W.
Washington, D. C.

Attorney for Appellees

UNITED STATES COURT OF APPEALS

For The District Of Columbia Circuit

No. 13,380

HARRY A. GOLDSBOROUGH,
Appellant,

v.

JOHN MARSHALL, ET AL,
Appellees.

No. 13,381

HARRY A. GOLDSBOROUGH,
Appellant,

v.

WILLIAM T. WARD, ET AL,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

In the instant case each administrator claimed that the other was wrong so appellees rely on Sec. 107 of Title 20 of the District of Columbia Code. The estate is entitled to be administered and the court was correct in removing the administrators and selecting a disinterested and able party to administer this estate.

As to the Amendatory order, no action has been taken by the administrator appointed thereunder, as he is awaiting the outcome of this appeal.

It is respectfully submitted that the court below did not err in removing appellant as administrator.

Respectfully submitted,

FOSTER WOOD
1424 K Street, N.W.
Washington 5, D. C.

Attorney for Appellees